

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TENNESSEE
3 CHATTANOOGA DIVISION

5 TANJA BENTON, :
6 Plaintiff, :
7 v. : 1:22-CV-118
8 BLUECROSS BLUESHIELD OF :
9 TENNESSEE, INC., :
Defendant. :

Chattanooga, Tennessee
June 27, 2024

12 BEFORE: THE HONORABLE CHARLES E. ATCHLEY, JR.
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

16 DOUGLAS S. HAMILL
MIKEL & HAMILL
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Chattanooga, Tennessee 37403

FOR THE DEFENDANT:

ROBERT E. BOSTON
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24 JURY TRIAL
25 THIRD DAY OF TRIAL
EXCERPT OF PROCEEDINGS
CLOSING ARGUMENTS

1 (Prior proceedings were heard but
2 not requested to be transcribed herein.)

3 MR. HAMILL: Thank you.

4 Ladies and gentlemen of the jury, thank you for
5 your patience in this case.

6 If you recall, in BlueCross's opening
7 statement, you may recall that Mr. Boston gave you a
8 baseball analogy about an umpire calling the balls and
9 strikes. You see, it's the umpire's job to treat every
10 batter the same, but that's not the case here. Not
11 everyone involved in BlueCross's vaccine accommodation
12 process was treated the same. You see, it was the
13 employee who didn't get a fair shake in this process,
14 and that's because the accommodation process was not a
15 level playing field. Far from it.

16 The better baseball analogy I like to make for
17 this case would be like telling the employee to step up
18 to the plate, but you can't use a bat to swing at any of
19 the pitches.

20 See, throughout this case, BlueCross has told
21 you that it wanted to ensure its accommodation process
22 was uniform, but it was rigged to effectuate a uniform
23 outcome. No employee that requested a religious
24 accommodation would remain employed after the 30-day
25 deadline. And the proof has shown that is exactly what

1 happened. And Dr. Tanja Benton was one of the victims.

2 Now, that's the big picture. Now let's look at
3 the three specific questions that you, as a jury, will
4 be asked to answer in this case. And right off the bat,
5 I'm going to show you the verdict form that you will be
6 given.

7 The first question that you have to answer:

8 Has the plaintiff, Tanja Benton, proven by a
9 preponderance of the evidence that her refusal to
10 receive the COVID vaccination was based upon a sincerely
11 held religious belief? The answer is yes.

12 Now, under the law that the judge will charge
13 you, religion includes all aspects of religious
14 observance and practices as well as beliefs that are, in
15 the plaintiff's own scheme of things, religious. Now,
16 one factor to consider is that religion addresses
17 fundamental and ultimate questions having to do with
18 deep and imponderable manners.

19 Now, Dr. Benton has explained her Christian
20 belief about the sanctity of human life. She believes
21 that God created humans in his own image. Human life,
22 she believes, begins at conception. According to
23 Dr. Benton's religious beliefs, a fetus is a human. You
24 see, the origin of life and the connection to God is
25 certainly a deep and imponderable manner for the

1 definition of religion under the law that you'll be
2 given.

3 Religion is also defined as a comprehensive --
4 being comprehensive in nature. It consists of a belief
5 system. Dr. Benton's Christian beliefs are all
6 encompassing. She testified that she is guided by God's
7 teaching in the Bible. And those biblical teachings,
8 she's testified it shapes and influences how she views
9 life and her mission in life.

10 Now, the law's protections, you'll hear, apply
11 to religious beliefs whether they are common or
12 non-traditional, regardless of whether they are
13 recognized by any organized religion. So just because
14 Dr. Benton is not a formal member of a particular church
15 or denomination, she -- her religious beliefs are still
16 protected under the law.

17 So what proof have you heard about Dr. Benton's
18 objections being sincerely held religious grounds for
19 objecting to the COVID vaccination? Well, first, you
20 got to see Dr. Benton's detailed accommodation request
21 form that she submitted, and if you recall looking at
22 that, all her grounds for objections were based upon her
23 religious beliefs. There's nothing in her accommodation
24 form that had anything to do with I am not taking this
25 vaccine because no one can tell me what to do about my

1 body. There was no complaints or objections based on
2 medical reasons, such as I don't think the vaccine is
3 safe, I don't think the vaccine is effective. No
4 political statements whatsoever. The only grounds she
5 gave were religious based.

6 Now, you don't have to just go off what she
7 stated at that time. You see, you have a good snapshot
8 into what she sincerely believed because you've seen
9 what she's posted in private chat groups and in private
10 texts with her friend, and that was part of Defense
11 Exhibit 10.

12 You may recall her statement on this private
13 chat group where she was describing for her, Ephesians
14 6:10-18 had been a verse that she'd been dealing with
15 for several months now. "We're engaged in a spiritual
16 war." You see, Dr. Benton sincerely believed that her
17 act of objecting to COVID vaccination was an act of
18 spiritual warfare that she believed was God honoring,
19 and she sacrificed her job for that.

20 You'll also remember a private text message
21 that she had with a coworker, Renea Tennyson, and this
22 text message was two days before she lost her job. She
23 and Ms. Tennyson were talking about the impending
24 termination. Ms. Tennyson would say, well, wish you the
25 best of luck. You remember what her response was? She

1 said to "keep this thought with you today, it takes
2 tremendous courage to do what you're doing. I know God
3 is on our side no matter what bad decisions they make."
4 Now, she was motivated by her religious beliefs. If she
5 was irreligious, why in the world would she be talking
6 about spiritual warfare and believing that God was on
7 her side?

8 You can think about these instant chat messages
9 and text messages sort of like someone's private journal
10 or a diary. These are things that she's sharing
11 privately without any expectation that anyone's going to
12 be reading them. They're sincere. They're genuine.
13 They were made roughly at the same time, within about
14 two months of her decision to object to the COVID
15 vaccination. They're trustworthy sources, ladies and
16 gentlemen. If you want to look into her heart --
17 because that's kind of what you're having to do -- was
18 this sincerely held? Was this a religious belief? The
19 answer is yes. This is strong proof of that.

20 Now, there -- BlueCross has not put on any
21 proof that Dr. Benton has ever told anyone else I
22 objected to COVID vaccination for this reason and that
23 reason, politics, blah blah blah. There -- you have not
24 seen any proof where she has made contradictory
25 statements. She has been consistent -- consistent

1 throughout this case on that point.

2 And, ladies and gentlemen, you heard the
3 testimony of her sister-in-law, Lynn Benton. Now, when
4 you look and consider her testimony, you'll realize that
5 the sister-in-law really does not have a close
6 relationship with Tanja. They haven't spoke on any
7 spiritual matters in over 20 years. And you know why?
8 Because they have divergent views on spiritual matters.
9 It is not uncommon for people who have completely
10 opposite religious views not to bring religion up in
11 conversation, particularly if you very rarely talk with
12 the person. Lynn Benton admitted that she had only been
13 at her house twice a year. Thanksgiving, Christmas.
14 Three hours at a time.

15 She finally had to admit that no, she'd never
16 had any conversations with Dr. Benton about her
17 spiritual or her Christian beliefs. No conversations
18 about her beliefs about abortion and sanctity of human
19 life. No conversations whatsoever about why Dr. Benton
20 objected to the COVID vaccination. And she finally had
21 to admit that she really has no proof as to why
22 Dr. Benton objected. She was speculating because
23 Dr. Benton is a private person.

24 In fact, she admitted Tanja doesn't talk much.
25 And that's right. She doesn't talk much, and she's not

1 going to share her private Christian beliefs with
2 someone that she's not close to and that she knows
3 doesn't have the same beliefs as her.

4 So, in summary, you don't -- as a jury, you
5 don't have to necessarily agree with Dr. Benton's
6 religious beliefs. All you have to do is determine,
7 were these beliefs sincerely held? Were they genuine?
8 And was that the basis for her objection to the COVID
9 vaccination? We have submitted proof, and we believe
10 that is the answer.

11 Now, the second question you're going to have
12 to answer is -- and the burden has now shifted over to
13 BlueCross -- has BlueCross proven by a preponderance of
14 the evidence they offered a reasonable accommodation to
15 the plaintiff?

16 Now, BlueCross had a procedure on the books
17 whereby the employee's supervisor and frontline HR
18 person were supposed to make a determination on whether
19 a reasonable accommodation could be made or not. You
20 heard that. But BlueCross deliberately ignored this
21 procedure and decided they were going to come up with a
22 new procedure. This was a predetermined decision that
23 they came up with. The offer that you saw was made well
24 before Dr. Benton or any employee even had input, even
25 knew that the vaccine mandate existed or was going to

1 apply to them. This -- this was an accommodation
2 that -- that the company had come to that was, again,
3 predetermined and made without ever reading any of the
4 specific requests.

5 You heard the proof. Jennifer Shields didn't
6 thoroughly read through Dr. Benton's accommodation
7 request. She just merely funneled it up to Attorney
8 Wood. Hal Gault, her boss, said, I didn't read it.
9 That wasn't our job. HR's role was not to read these
10 accommodation requests. We funnel it up to legal.
11 Chief human resources officer who was part of the
12 executive leadership team: I didn't read it. That's
13 not our job. That's what legal does. This was a
14 one-size-fits-all offer that the company made. There
15 was no individualized assessment.

16 You remember what the old policy was? Get the
17 frontline supervisor talking with the employee and the
18 frontline HR, and they're going to work it out. There
19 was nothing like this. There was nothing
20 individualized.

21 They told you that they were assessing a
22 generalized job category called "public facing." Okay?
23 That's over 800 employees. They never knew anything
24 about Dr. Benton. They knew nothing about what she did.
25 They didn't know how frequently she interacted with

1 clients. They didn't know who the clients were. They
2 knew nothing whatsoever about Dr. Benton when they came
3 up with their accommodation, the take-it-or-leave-it
4 accommodation.

5 You recall when they sent the email and
6 Dr. Benton was asking, what other information do you
7 need? Do you remember the response in the -- in the
8 template email that came from legal? Doesn't matter.
9 Doesn't matter what you have to say. We don't need any
10 more additional facts from you because, remember, this
11 is the offer as is. It's not going to change.

12 Now, looking at the three parts of the offer,
13 the first one was they were going to remove for 30 days
14 her public-facing duties. Well, what benefit was that
15 for Dr. Benton? You see, Dr. Benton testified and her
16 boss testified she didn't have any public-facing duties
17 for 30 -- in that 30-day period, so there was nothing to
18 modify. In fact, she didn't have any public-facing
19 duties for the next five months. So was that offer even
20 beneficial whatsoever to her? No.

21 Second, they said, well, you can use this
22 30 days just to figure out maybe you should go get
23 vaccinated. Okay. That's insulting because
24 Dr. Benton -- the reason why she requested the
25 accommodation is 'cause she said I can't -- I can't get

1 vaccinated. So to tell her jettison your religious
2 beliefs, get vaccinated so you won't lose your job, is
3 very insulting.

4 The third thing that they offered was this:
5 You've got 30 days to look for a new job. Good luck.
6 We're not going to actually give you any affirmative
7 assistance.

8 Now, ladies and gentlemen, when Judge Atchley
9 charges you with the law, the law says it requires
10 affirmative action by the employer to solve the conflict
11 between the employee's religious belief and an
12 employment rule in conflict. There was no affirmative
13 action here. No assistance was given to her. You
14 recall she asked time and time again, can you at least
15 tell me which of these jobs are subject to the mandate
16 and which are not? She asked multiple times. And you
17 heard Jennifer Shields as well as the others say, no, we
18 didn't have a list to give to her. She could just look
19 it up.

20 And she talked about the frustrations trying to
21 go through all these job descriptions. There was no
22 conspicuous heading that said "This job is subject to
23 the COVID vaccination mandate." And, finally, three
24 days before the deadline, the recruiter said, oh, yeah,
25 your -- you should be looking at some kind of innocuous

1 type of language that says, oh, "various immunizations
2 may be required." That's the language you should be
3 looking for. That just shows how confusing and
4 frustrating it was for her.

5 When we talk about there was a hiring freeze at
6 the time, not very helpful when you've got a short
7 30-day window that suddenly job vacancies are delayed in
8 posting. And you heard a lot of proof about the length
9 of time it took at BlueCross for jobs to be posted and
10 then filled.

11 Do you remember Mike McPherson? He said yeah,
12 it takes a long time. In fact, it took him over six
13 months to fill Dr. Benton's job. The two vacant jobs
14 that Dr. Benton eventually applied for, did you see the
15 time window, how long it took for them when she got her
16 rejection letters? January, February, way past the
17 November 3rd deadline for her. This was a long,
18 cumbersome process, and she was going to have to stand
19 in line with all the other people applying for vacant
20 jobs. She wasn't going to get a speed up on an
21 interview, and it was going to be very, very hard.

22 The recruiter. What did the recruiting
23 department do for Dr. Benton? Nothing. They didn't
24 even pop up. If -- if -- if the recruiting department
25 was going to provide any assistance, don't you think

1 that they would show up at the beginning of the 30-day
2 period? The only time a recruiter popped up was
3 November the 1st, right at the end, and that wasn't to
4 say hey, let me work with you with your skills. I've
5 identified some jobs. Let me help you. Let me try to
6 speed up this interview process. We know who the
7 interviewers are. At least get you in the cue.
8 Nothing. She didn't even get interviews for the jobs
9 that she applied for.

10 Finally, very important, if you recall, there
11 was an email that Jennifer Shields sent to her boss, Hal
12 Gault, and she was -- this was at the very end of the
13 recruiting process. If you recall seeing her email,
14 Ms. Shields was reporting to her boss, you know what?
15 There's a whole bunch of employees that have been
16 requesting the accommodations that I feel like they have
17 not been benefited from by the accommodation and that
18 the 30-day accommodation was not workable.

19 Amen. It wasn't workable. You see, the proof
20 is the company's proposal was not a permanent solution.
21 It was temporary at best. It was really just a
22 temporary 30-day delay in her termination.

23 So has the company, BlueCross, met its burden
24 of proving that this was a reasonable accommodation?
25 It's their burden, not ours. The answer is no. They

1 have not met their burden. This was not a reasonable
2 accommodation.

3 The last thing that you're -- question that you
4 have is, again, something that BlueCross has to prove.
5 Has BlueCross proven by a preponderance of the evidence
6 that it could not reasonably accommodate the plaintiff's
7 religious beliefs without undue hardship? It's their
8 burden.

9 BlueCross claims it would be an undue burden
10 for Dr. Benton to meet virtually with her clients.
11 Well, what proof has BlueCross come forward with that
12 meeting virtually with clients has somehow caused a
13 substantial increase in costs? Have -- have you seen
14 any evidence of damage to client relationships because
15 Dr. Benton was virtually communicating with the clients?
16 No.

17 Do you remember Tony Pepper? Tony Pepper was
18 the guy in charge of all the major account clients.
19 Those are every one of Dr. Benton's clients. He came in
20 and said, hey, I know if my clients don't like things,
21 and my clients have said nothing about we don't like
22 virtual communications, we want to have all of ours
23 in -- in person. No.

24 And do you remember the key here? The proof is
25 it was the client's choice, not BlueCross's. The

1 client's choice whether these were going to be in person
2 or whether they were going to be virtual. And at the
3 time that this was going on, the clients were resoundly
4 choosing virtual. You heard the proof. All of 2021,
5 every one of her clients chose virtual. All of 2022,
6 all of her clients chose virtual.

7 Mr. McPherson, the only person that has
8 testified for BlueCross on this point, claims that, oh,
9 in his opinion, in person is just better. Okay. Well,
10 it's kind of hard for him to even make such a statement
11 when he's never even witnessed Dr. Benton performing her
12 client meetings virtually.

13 There's been no evidence whatsoever that her
14 virtual presentations were any less effective than her
15 in person. Y'all haven't seen any evidence of a loss of
16 business, of money damages, of clients being unhappy.
17 Nothing. BlueCross has failed utterly to meet its
18 burden of showing that Dr. Benton's proposal was an
19 undue hardship.

20 So where does that leave things? Having found,
21 number one, that Dr. Benton had a sincerely held
22 objection to COVID; number two, that the accommodation
23 offered to her was not reasonable; and, number three,
24 her proposal was not an undue hardship, that means she's
25 entitled to --

1 THE COURTROOM DEPUTY: Five minutes.

2 MR. HAMILL: -- damages. And so the damages
3 here would be her lost pay and benefits. This is
4 unrefuted testimony. Okay? \$170,000.

5 She suffered emotionally. You've heard that.

6 I'm not going to go back through that. That's up for
7 you -- that -- the number you put there, that's for you
8 to decide.

9 The last question you have to deal with is
10 punitive damages. Number five, if you award damages in
11 this case, do you find the plaintiff, Tanja Benton, has
12 proven by a preponderance of the evidence that she is
13 entitled to punitive damages?

14 What's the evidence on punitive damages here?
15 The executives in this case that -- many of the HR folks
16 that testified, they know what the law is. They told
17 you we know exactly what the law is when it comes to
18 religious accommodations in the workplace and the
19 protocol. But in this case, they run -- they did an
20 end-run. They deliberately chose not to make this an
21 interactive process. They deliberately chose to
22 jettison their old policy.

23 And when they claim that they're having an
24 interactive process, it's lip service. Do you -- do you
25 remember where the interactive process was? Was it at

1 the beginning with the employee and the company talking
2 about how can we come to a reasonable accommodation?
3 No. They shifted it out to the end. The company said,
4 here it is. Now you can have your interactive process.
5 And what -- what was the point of that? They said,
6 well, so the employee could feel like they'd been heard.
7 But it wouldn't change anything.

8 Ladies and gentlemen, this was a predetermined,
9 rigged method, and the process was uniform for a reason.

10 Remember Tony Pepper? He tried to engage and
11 advocate for some of his employees not to get -- to --
12 who didn't want to get vaccinated. He said we can
13 handle it at the local level. We can handle it here.
14 Management. They said no, no, no, no, no. This is a
15 uniform process. Up to legal it goes. You see, the
16 company was afraid that some of these employees would
17 actually get accommodations. They would keep their job.
18 And that is not what they had in mind.

19 The proof shows that every single person that
20 requested a religious accommodation lost their job come
21 November the 4th, 2021. You think that's a coincidence?
22 You see, the company rigged -- with full well knowledge
23 of what they were doing -- rigged this accommodation
24 procedure to effectuate a uniform outcome, and that is
25 exactly what they did. No employee like Dr. Benton came

1 out of this process with any benefit whatsoever except
2 for a pink slip.

3 Thank you.

4 THE COURT: Thank you.

5 MR. BOSTON: Members of the jury, when I first
6 met you two days ago, I asked you if you would be able
7 to consider my client as a person and people like Ms. --
8 Ms. Benton is, and you said yes. I -- and I appreciate
9 you doing so. Thank you for your time and your
10 attention and listening to me and the courtesies you've
11 shown.

12 This is the last time that we visit with one
13 another. I have 35 minutes, which we've asked the Court
14 to give each of us. In doing that, at the end of my
15 comments, Mr. Hamill can return to the podium, and he
16 can simply look at you and say everything Mr. Boston
17 said is wrong. It's not supported. It's not there. I
18 disagree. It's argumentative. I can't do anything
19 other than sit and watch. This is the last time I get
20 to come -- I can wring my hands, but that's it. Thus,
21 I'm asking for just a little bit of your patience as I
22 go through the points I want to summarize on behalf of
23 BlueCross.

24 You notice that Mr. Hamill mentioned very
25 briefly, in quick passing, the economic claim that his

1 client is making? Rest assured, Ms. Benton is telling
2 you she wants substantial money. If I don't address it,
3 then it will come back up to me when I'm sitting down
4 and say he didn't even raise the money issue, he didn't
5 even talk about it. So I'm doing it not because my
6 client believes there's any money due, because I want to
7 put it in context of what is being sought. If I don't,
8 I won't have the ability ever to address it no matter
9 what he says about it.

10 Is a person entitled to over 100 grand of
11 compensation based upon what my client contends is a
12 difference of opinion and difference of view as to how
13 somebody is going to try to save lives? I've just heard
14 in the trial that my client's approach was a sham and it
15 was somehow some type of dictated, created thing to
16 harm.

17 Let's go back into the context of what we faced
18 back in 2020 and '21. It was an unprecedented pandemic
19 where lives were being lost, and our client being a
20 healthcare, a leader in the field, was addressing it to
21 save people's lives as well as to help their own safety,
22 not harm. My client has been presented in tactful
23 language as some type of villainous operation that's
24 trying to get rid of people, not keep people safe.
25 That's why we went to the mandate to start with.

1 Recall Dr. Willis's testimony. 56 different --
2 56 different medical organizations had come forward
3 supportive of the vaccine at the time it had come into
4 play, which it was available. It was used to return a
5 corporate entity and organization with multiple
6 employees back to how it was before, to evolve into it,
7 yet the vaccine mandate has become in the presentation
8 presented to you as some type of horrid thing that's
9 designed to harm, and that's not the case.

10 The proof from the people who talked about how
11 it was developed is it was there to help. It is there
12 to provide comfort, safety, and a resource to keep
13 people safe and healthy. That's why it was there. We
14 are being accused of doing something wrong and illegal
15 when we're trying to do something that is helpful to the
16 entire country at the time.

17 In return for that, if you'll look at the jury
18 instructions that Judge Atchley is going to give you
19 shortly, there's a stipulation that's in there that's
20 on -- I think it's going to be on page 9, page 10 when
21 you look at the instructions, which will be written in.
22 The stipulation says that Ms. Benton -- Dr. Benton was
23 making \$116,000 at the time. She is seeking from you --
24 that's her base salary. She's seeking from you well
25 above that.

1 If you recall her cross-examination, I asked
2 her, how did you get that? And she admitted my lawyer
3 came up with the calculation of that. It's jumped
4 dramatically both in base and compensation as well as
5 what she is seeking from you. This is the back pay
6 of -- back pay and benefits.

7 In addition -- in addition, she is seeking a
8 substantial amount for benefits, which, if you'll recall
9 the Plaintiff's Exhibit Number 22, this is her offer
10 letter. You'll have these, by the way, when you go back
11 to the jury room. 22 is the offer letter. It provides
12 that she is getting -- didn't go in detail -- 401(k),
13 4 percent match, company paid health, fully funded HSA,
14 a health savings account, dental coverage, long- and
15 short-term disability, a fully stocked kitchen,
16 unlimited paid time off, general parent -- parental
17 leave, as well as -- as well as stock options.

18 She is asking you to reward her for a decision
19 that she needed to make for her own reason in a huge
20 amount of money. I'm asking you not to take that bait.
21 Don't do it based upon what she has presented to you.

22 In addition, Dr. Benton is asking you to award
23 her compensatory damages, some damages for pain. On
24 what basis would you do this on this record? Dr. Benton
25 said it was difficult, it was hard, like life in general

1 can be for all of us. Change is difficult. But was the
2 compensatory damages proven? You can't do it, members
3 of the jury, based upon sympathy, compassion, just on
4 that. You have to be doing it on proof. And what did
5 she prove?

6 Well, very quickly, Dr. Benton seems like a
7 nice person to all of us. She is accomplished. She's
8 educated. She's done a lot. She has a job that many,
9 many people in the world would love to have. But did
10 she prove that she is -- is deserving of being
11 compensated by money in addition to her other claim?

12 She's able to function in her life. She
13 takes -- takes care of her family. She still works.
14 She's active, involved in the things she does. She has
15 all the things that she had before. This is not a case
16 that's deserving of your consideration for compensatory
17 damages. It is a difference of view on a business and
18 personal decision from both sides looking at one
19 another. That doesn't dictate an award of damages.

20 Finally, Mr. Hamill mentioned the concept of
21 punitive damages. Punitive damages are an award -- it's
22 an opportunity to punish, to punish someone or to make
23 an award to prevent something else from happening.

24 Take the latter first. There's no longer a
25 mandate based on the government -- government action.

1 There was an injunction that was entered that precluded
2 that from being done, and there's been no hint,
3 discussion, or other references to it since that time.
4 There is no risk that something will happen further.
5 Even if you disagree with my client's decision before,
6 there is no risk that it were to come back. No evidence
7 was proposed that it could.

8 In addition, punitive damages are to punish
9 somebody. Now, think back with what I said a moment ago
10 and what you've heard from the trial. What was my
11 client's goal with going to 800 people and saying we
12 want you to be -- be vaccinated so that you help stop
13 the spread of the pandemic for our people -- our people
14 we deal with, our vendors, and our customers? Do you
15 punish someone for doing the things that the world was
16 doing at the time, which was attempting to stop it and
17 attempting to address it? Did what everyone else was
18 trying to do. Let's find a solution in -- in a here --
19 heretofore never experienced situation.

20 Is that something that you punish someone for
21 even if you disagree with the underlying business
22 decision? And the answer is no.

23 I point out each of those three things related
24 to damages only because I don't have the opportunity
25 ever to mention them again.

1 My client is asking you to answer the
2 questions, are we liable? No. No. No in all of those.
3 The verdict form you look at, it's -- it's your score
4 card as to what you're doing. I'm asking you to rule in
5 favor of BlueCross BlueShield on each of those -- on
6 each of those situations.

7 Now I want to turn to those, if I may, the
8 three questions that have to be asked. The first one is
9 the issue of sincerely held religious belief. Awkward,
10 difficult, concerning. Dr. Benton testified from the
11 start, and she said I had a sincerely held religious
12 belief. And if you'll remember, what she did was she
13 provided -- my -- mine has gotten marked up with notes,
14 but this is Joint Exhibit Number 7. And -- excuse me.
15 That's -- I'm sorry. That's -- I misstated the number.
16 Excuse me. Just a second.

17 MR. WOOD: Number 6.

18 MR. BOSTON: Joint Exhibit Number 6 was her
19 letter that she wrote asking for the accommodation. And
20 in it, what she has said is, "I strive to honor God in
21 all I" -- "I do. My sincerely held religious beliefs
22 are" -- "are all-encompassing aspect" -- "are
23 all-encompassing aspects within my life. They govern
24 all I do in life." Her words. Her summation. Her
25 suggestion.

1 When we were talking on cross-examination about
2 those sincerely held religious beliefs, she said, yes, I
3 have them. She said, in essence, it's in here, and I
4 remember pointing to my chest at one point because she
5 said it's internal. I think her words were "they
6 are" -- "my religious beliefs are what I profess."

7 There's no way to go back other than to take
8 her word for it. There is no doctrine that she follows.
9 There is no church, scripture, or material matter
10 approach that she has presented to you for which we
11 would gauge it if we were asked to do it. And that's a
12 difficult thing for us to do 'cause we all have our
13 internal needs, various means to get through life. But
14 she has told you, in her own words, this is what I
15 reflect. They are all I do in life.

16 When I was presenting evidence on this point, I
17 brought forward to you, through the witnesses, several
18 different perspectives, though, that Dr. Benton also
19 admitted occurred. The first one of those was her
20 postings. First one was the postings, and that was her
21 own social media uses. I took a snippet of those -- I
22 took six of them. And there's exhibits. Defendant's
23 Exhibits 10 and 11. But we put them up there and -- I
24 put them up there so you would have the different
25 picture of the rest of her life.

1 Her -- her objections to the vaccine were taken
2 and were influenced by multiple different resources that
3 she was using and was involved in in her own life and in
4 her own interactions with people. They're there. I
5 didn't come creating one of them. I just showed them to
6 you. And they show a different view. They show
7 inconsistencies between action and behavior and comments
8 and -- and what she did.

9 What were those? Remember her commentary her
10 boss was a member of a cabal? He might be in the CIA.
11 Where one -- where one go, we all go, which is a phrase
12 used in some of the social organizations that are
13 designed -- or excuse me -- they're influencing other
14 types of reasons other than religious accommodations.
15 We don't have any doctrine we can go to to see what a
16 church or other organization of religion teaches or they
17 follow and whether or not she's consistent with that.

18 We know she said she had taken her own
19 vaccinations in prior times and never investigated how
20 they were created, whether they were influenced by way
21 of testing and/or development with aborted fetal cells.
22 We know that she had her children vaccinated by the same
23 thing without any investigation. We know that she took
24 her kids out of school because of the masking needs that
25 she was objecting to as opposed to vaccination needs.

1 That's inconsistent with you if you're -- if you're
2 objecting to vaccinations.

3 One of the things you do is look and see if
4 there's consistency in what you did versus what you
5 said. And I submit to you, members of the jury, one of
6 the decisions you have to make is did -- by a
7 preponderance of the evidence, more likely than not --
8 more likely than not, did she prove to you that her
9 objection was religious based or not? If it was not,
10 the first question is you do not -- you find she did not
11 have a sincerely held religious belief. And that ends
12 the inquiry for your trial.

13 The second issue that we have to address in the
14 verdict form is the one about whether or not the
15 accommodation was reasonable. You saw what it was, and
16 we've talked about this -- I think the right word is
17 "ad nauseam" -- until we're sick of it. Everybody has.
18 Were there things that were offered that were reasonably
19 designed to accommodate a need not to be vaccinated?
20 That is a question of judgment. It is a question of
21 difference of opinion.

22 Dr. Benton would say no, they weren't
23 reasonable. My client had pointed out in an effort
24 to -- to explain what it did at the time, why it picked
25 the ones it did. They were fivefold. They were in

1 Jennifer Shields' summary email that you saw yesterday
2 when she was testifying. And they were presented in
3 ways of time, resources, people, accommodation, effort,
4 possibilities, and continuation after the relationship
5 might be there for a rehire. Those are steps.

6 An employee is not entitled, members of the
7 jury, to their accommodation. That is not the law.
8 They are entitled to an accommodation that's reasonable
9 under the circumstances. My client was not faced, when
10 it put in place its mandate, with one person. It was
11 faced with everybody that had to be considered within
12 its organization.

13 If it's going to do what the mandate was for,
14 which is help create an opportunity for safety and
15 health to take over versus death -- death and
16 destruction otherwise -- that's what was faced. Recall
17 back at the time, this is not an esoteric-type issue
18 that Mr. Hamill would want us to have perfect -- perfect
19 guidance on, hindsight to deliver it. Didn't work that
20 way. It didn't work that way.

21 The accommodation was reasonable under the
22 circumstance, and it was designed to find some ground
23 that would allow there to be progress towards a
24 solution.

25 The third question comes. Was the -- if, in

1 fact, the reasonable accommodation was made, was it a
2 hardship to do something else different or otherwise?
3 And a lot of that comes down to Mr. McPherson's
4 testimony, and this goes into the issue about whether or
5 not the department could, should, needed to, or was --
6 needed to continue to operate temporarily as it had,
7 which is pull back, or could it move forward back to
8 where it was in its operation?

9 Now, let's -- let's take Mr. McPherson. He's
10 the one that testified mostly about what was needed and
11 what was required. Let's critique Mr. McPherson's
12 opinion. He talked a lot. He also was passionate. And
13 he also was very proud of his department.

14 But what was not questioned about
15 Mr. McPherson? Two people, Tony Pepper -- Dr. Benton
16 said he was honest, he was straightforward, he was
17 transparent, and they would believe him. He told you
18 why there was a need to come back to -- for face-to-face
19 interactions. He described what it was, why it was
20 important to the department, why it was important to the
21 company, and why it was important to the clients. That
22 reasoning was not impeached. It was questioned. It was
23 not impeached.

24 Was he right or not? 71 percent of
25 Dr. Benton's customers that she dealt with at the time

1 have come back to requesting face-to-face meetings. We
2 know it was important. We know the company's -- this
3 part of the company's business was based on that type of
4 interaction, and Mr. McPherson testified why it was
5 important to come back to it. Dr. Benton disagreed.
6 She didn't need to -- want -- want to do it.

7 If you would pull up Joint Exhibit Number 6,
8 Mr. Zeitlin.

9 I have one exhibit I would like to show you
10 very quickly.

11 Go down to the bottom. The last page. If
12 you'll bold up the paragraph, "the requested
13 accommodations." The next to last paragraph. Get it
14 all on the screen, if you would.

15 This -- this is what Dr. Benton is requesting,
16 her requested accommodation. Find anywhere in there
17 that there's any remote suggestion that I'm going to be
18 able to come back to work as we were before, which is
19 the meetings that annually were driven by the customers
20 and relations with everybody else. It's not there.
21 She, for what reasons that are important to her, put the
22 stiff arm on it. There's not an accommodation that can
23 be made other than what my client did after what she
24 said.

25 When Dr. Benton says, "I'm willing to continue

1 to work in this same manner," that's the manner that had
2 been going on during the time that we were in shutdown.
3 It's not the way it was before. Other than throwing the
4 mandate out the window, other than forgetting about the
5 reason why it was put in place to start with, there's
6 not a solution, according to what Dr. Benton has
7 suggested to the company.

8 When that happens, the difference of opinion is
9 framed. And the reasonableness of the other
10 accommodations that were out there -- time, opportunity,
11 the ability to transfer if there's an open position for
12 which you're entitled -- become relevant.

13 Dr. Benton waited, members of the jury, till
14 four days before the time had run before she ever
15 started seeking other positions. If you recall her time
16 frame, the company doesn't tell her when to go seek one
17 or what it would be or what you're entitled to. It
18 can't do it just for her. It's got all the other
19 people. If it's going to act fair and equitable to
20 everybody, it makes the opportunity available from which
21 the individuals then will pursue it. It doesn't have
22 the ability -- if -- if, in fact, I was seeking a job --
23 if I was employed and I was seeking a job and somebody
24 went and favored, you know, another person right there,
25 that's -- that's to my disadvantage. It doesn't work

1 that way.

2 Dr. Benton is a college-educated
3 doctorate-level -- doctorate-level person. She has
4 every ability to use the services, the portals, and the
5 information at the company as everybody else. She chose
6 not to, and the suspicion would be probably because she
7 hoped things would change.

8 But she was on notice that was running. When
9 the time runs, it runs. She had the opportunity to seek
10 additional employment afterwards. She chose not to.
11 She got upset with me when I was asking her about would
12 you do it? The opportunity was there, and she worked
13 with people that she liked who were supportive of her.
14 Maureen Lowe, Mike McPherson were -- as she told you,
15 were good bosses. By that time, she was jobless. She
16 didn't have the right taste in her mouth about how she
17 felt she had been treated, so she didn't try to continue
18 to do so.

19 Two other points I wanted to make. Dr. Benton
20 mentioned -- in part of her proof, she said I only spent
21 1 percent of my time that was doing face-to-face
22 meetings. If you spend 1 percent of your time doing
23 face-to-face meetings, does that undermine the
24 importance, or does that increase their importance? It
25 increases the importance 'cause that's the limited time

1 you have to provide the service that's applicable to
2 that time and that action. Dr. Benton was using that
3 arguing with me on cross-examination of -- that she was
4 using that to point out it really wasn't important to
5 have face-to-face time.

6 My client disagrees with that, and you heard
7 why. It was very important to have the face-to-face
8 time with customers and clients. That's how we had our
9 business advantage. That's how we delivered our
10 services. That's how we had grown.

11 Taking the analogy I think I made inadvertently
12 when I was doing my cross-examination, what if you
13 have -- what if you have an athlete that is -- her or
14 his event is the 100-yard dash? The 100-yard dash takes
15 about 10 seconds to run it at a national level kind of a
16 person. If, in fact, time is the indicator of
17 importance, then that 10 seconds is pretty darn
18 important for what you're doing. But it doesn't
19 indicate that that employee is -- that athlete didn't
20 have weeks and months and years of training and training
21 to be ready to do it.

22 Dr. Benton had plenty of time to get ready to
23 be a -- a -- an athlete in my analogy. But the time to
24 run the race is not how you measure that. The
25 importance of what you're doing at the time you're

1 running the race is what you look to. And here -- and
2 here those face-to-face meetings are described, in my
3 words, pretty much the bread and butter of what this
4 department does. Dr. Benton was in a position where she
5 couldn't do it for a reason that was important to her,
6 but it's not an illegal reason.

7 The final thing I want to mention to you,
8 members of the jury, is this, with, again, my thanks for
9 your patience: Do you pay somebody hundreds of
10 thousands of dollars or \$100,000 or some other
11 calculation because they have a different view of how to
12 make a judgment call that's important at the time in an
13 unprecedented circumstance of the healthcare crisis to
14 you? Or do you find that it's a sham when people are
15 trying to save lives, not harm? Do you find that some
16 kind of contrived thing -- that people are trying to get
17 rid of Dr. Benton when you heard she was one of the
18 better people in the department and what she did? Or do
19 you find it's a situation where a difference of view has
20 resulted in an unfortunate situation for two entities,
21 BlueCross BlueShield and Dr. Benton?

22 Sometimes -- members of the jury, I'm going to
23 leave you with this thought: Sometimes two good people
24 just shouldn't be married to one another. Regardless of
25 there being some accusation of fault, sometimes it

1 doesn't work that way. And in the fall of 2021, my
2 client submits and I argue to you -- again, my thanks
3 for your patience -- that's what happened. That's what
4 happened. It doesn't create illegality based upon
5 somebody's religion just because someone asserts that
6 that is the reason why I think it might have done so.

7 I ask you -- it's interesting. I appreciate my
8 adversary's point of raising the analogy I made in voir
9 dire about the umpire -- about the umpire. The
10 equivalent of what Dr. Benton is asking you to do is
11 simply shoot the umpire and simply say she and he didn't
12 make the right call. They didn't do it right. So they
13 are somehow wrong even if all good intentions and all
14 good efforts and all good judgment was to make the right
15 call. Is having to make a call in a difficult situation
16 subject to being criticized to the point of illegality,
17 or is it you're doing the best you can in a never
18 heretofore circumstance?

19 I'm asking you to consider my comments and the
20 proof you heard from the witness stand and those
21 exhibits and come back and make your ruling for
22 BlueCross BlueShield of Tennessee.

23 And thank you very much for listening to my
24 comments.

25 THE COURT: Thank you, Mr. Boston.

1 MR. HAMILL: Ladies and gentlemen, as I told
2 you at the outset, this case is not about the legalities
3 of the vaccine mandate itself. This case is not about
4 whether the vaccines are safe or effective. And yet
5 time and time again throughout this case, you've heard
6 BlueCross say we're the only ones that seem to care
7 about people's health. Dr. Benton doesn't seem to care.
8 I'm sorry. We have a problem with that. Did you see
9 what her request was? To continue working virtually.
10 How in the world can Dr. Benton be any kind of risk of
11 spreading COVID to any clients or anyone if she's
12 working virtually? And that's what she had been doing
13 this whole time. That was her request.

14 BlueCross has used the word "unprecedented" way
15 too many times in this case, but let me tell you when
16 you look back at the time Dr. Benton made her
17 accommodation requests, was there any testimony --
18 was -- did you hear anything that -- that would give her
19 any opinion that, oh, things are changing, we're
20 supposed to be going back to in person and meeting with
21 clients? No. Tony Pepper said no, that wasn't being
22 discussed. Mike McPherson was all over the board, but I
23 finally got him to admit no, no clients were asking for
24 in-person meetings. Why is she supposed to raise that
25 as a proposal when it's not even on the table? Okay.

1 But I will tell you this: Do you recall
2 Ms. Shields' testimony about what was discussed in the
3 October 27th meeting? She admitted that Dr. Benton, at
4 that point in time, when there were -- when she was
5 told, oh, yeah, there's something about in person, did
6 you hear the testimony from Ms. Shields? She said that
7 Dr. Benton said, I'll go back in person, I'll mask, I'll
8 social distance, I'll do periodic testing. If that's
9 what you want me to do, I'm fine with that. BlueCross
10 has mischaracterized throughout this whole case this
11 theory that Dr. Benton just didn't want to meet in
12 person and she was just going to slough off her job
13 duties. That is so, so far from the truth.

14 It is undisputed in this case that Dr. Benton
15 was a great employee. You heard from Mike McPherson it
16 took him over six months to replace her. If Dr. Benton
17 was such a great employee, why didn't BlueCross rehire
18 her once it halted the vaccine mandate? That would have
19 been a simple solution, don't you think?

20 And is it merely a coincidence that every
21 single employee that requested a religious accommodation
22 wound up losing their job? Every single one. What does
23 that tell you about the so-called "reasonableness" of
24 BlueCross's accommodation it offered to everybody,
25 including Dr. Benton? It wasn't a reasonable

1 accommodation.

2 There's no evidence of undue hardship. No
3 evidence whatsoever that there was any damage -- any
4 potential damage that could have been done for
5 Dr. Benton to continue doing what she had successfully
6 been doing for 18 months.

7 And, ladies and gentlemen, as far as sincerely
8 held religious beliefs, you saw her writings, her
9 private personal writings. This is spiritual warfare.
10 Spiritual warfare that she's been enduring for the past
11 two months, that she believes that God's on her side.
12 Do you want to know what's in her heart? That's what's
13 in her heart. She lost her job because of that.

14 She's not asking for the moon. She's only
15 asking for the compensation that she went through for
16 the 13 months that she struggled. And BlueCross could
17 have reached out to her and said the mandate's done,
18 come on back. You were a good employee. Did they give
19 her that opportunity? No. No.

20 This is a sophisticated company. They know
21 what the law was. They knew how to get around the law.
22 They knew how to tweak things, throw in verbiage that
23 sounded great. Interactive process. We just want our
24 employees to be heard. Well, we don't want them at the
25 table with us when we're going to determine what they're

1 going to do because we think we know better than the
2 employee.

3 That's not what the old procedure was. That
4 was the new procedure designed for one purpose:
5 Everyone vaccinated --

6 THE COURTROOM DEPUTY: Time.

7 MR. HAMILL: -- or you're done.

8 Thank you.

9 THE COURT: All right. Thank you, Mr. Hamill.

10 (Subsequent proceedings were heard but
11 not requested to be transcribed herein.)

12 END OF PROCEEDINGS

13

14 I, Stephanie Fernandez, do
15 hereby certify that I reported in machine shorthand the
proceedings in the above-styled cause, and that this
transcript is an accurate record of said proceedings.
16

17 s/Stephanie Fernandez
Stephanie Fernandez,
Official Court Reporter
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